

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

JAMES LEWIS DeROSA,)	
)	
Plaintiff,)	
)	
v.)	No. CIV-05-324-S
)	
JUSTIN JONES,)	
)	
Defendant .))	

OPINION AND ORDER

Plaintiff, an inmate in the custody of the Oklahoma Department of Corrections (DOC) and currently incarcerated at the Oklahoma State Penitentiary (OSP) in McAlester, Oklahoma, has filed this civil rights action pursuant to 42 U.S.C. Sec. 1983 arguing defendant Jones violated his First Amendment rights by failing to provide him with a kosher diet as his religion requires. Defendant filed a motion to dismiss arguing that plaintiff failed to exhaust his administrative remedies as to this claim. This court denies the motion to dismiss for the following reasons.

In his Amended Civil Rights Complaint filed April 19, 2006, plaintiff alleges defendant is denying him his right to free exercise of religion as guaranteed by the First Amendment by failing to provide him with a kosher meal. In the Amended Complaint, he states on May 23, 2005, he submitted a request to the Chaplain for a kosher meal. This request was denied. On May 26, 2005, he submitted a grievance concerning the kosher meals to the warden which was also denied. On June 6, 2005, he appealed this grievance to the warden. This appeal was also denied. The defendant agrees with these facts. In his motion to dismiss,

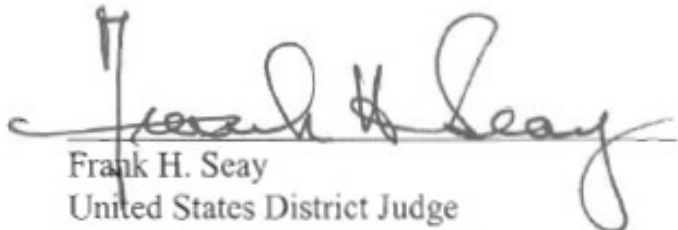
defendant states that on May 23, 2005, plaintiff submitted a Request to Staff to OSP Chaplain Franzese requesting that kosher meals be served at OSP. This request was denied. Defendant then states that on May 26, 2005, plaintiff filed grievance #05-189 requesting that OSP Warden Mullin make arrangements for kosher meals for those classified as being members of the Jewish community. The warden responded the Department of Corrections provides only (2) modified diets; non-pork and vegetarian. She informed him he could request the diet which meets his religious needs. According to defendant, plaintiff appealed the denial of grievance #05-189 to the Administrative Review Authority. On June 14, 2005, the Administrative Review Authority affirmed the response of the warden and denied Plaintiff relief. According to the DOC policy "The ruling of the administrative review authority...is final and will conclude the internal administrative remedy available to the inmate/offender within the jurisdiction of the Oklahoma Department of Corrections." Thus, plaintiff did complete the grievance procedure as to this grievance.

In his motion to dismiss, defendant contends grievance #05-189 is not the subject of this lawsuit, however, this court disagrees. A review of the Amended Complaint clearly shows plaintiff references this grievance throughout and mentions no other grievance or policy. In his motion, defendant discusses a policy that was not even in effect when plaintiff first filed this lawsuit. Accordingly, the court finds plaintiff did exhaust his administrative remedies as to the issue raised in the Amended Complaint and as such defendant's motion to dismiss is hereby **DENIED.**

The court sets the following deadlines in this case:
dispositive motion by March 23, 2007, and scheduling conference
before Magistrate Judge Shreder on July 13, 2007 at 10:00.

Dated this 2nd Day of February 2007.

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Frank H. Seay
United States District Judge
Eastern District of Oklahoma